IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)

FRIDAY, THE SEVENTH DAY OF JULY
TWO THOUSAND AND SIX

PRESENT
THE HON'BLE SRI JUSTICE C.V.RAMULU

WRIT PETITION No.5640 of 1997

Between:

1.Mandava Poornachandra Rao, and 3 others.

..... PETITIONERS

AND

1.Eluru Municipality, Eluru,
West Godavari District,
rep. by the Commissioner, and 3 others.

.....RESPONDENTS

ORDER:

This Writ Petition is filed to issue a writ of mandamus directing the first respondent to accord permission for construction of shops near the Badeti Park area on left bank of Eluru canal in Eluru town of West Godavari District on the sites leased out to the petitioners by the 4th respondent herein.

It seems that in the course of implementation of the master plan in Eluru town, the shops held by the

petitioners were surrendered to the respondent-authorities for the purpose of widening the roads. Thereafter, the petitioners were allotted with alternative plots on lease basis which according to the petitioners belong to Irrigation Department and the said allotment was made by the fourth respondent by an order dated 12-12-1996. The petitioners erected temporary sheds and have been conducting their respective business. By an order dated 21-2-1997, the allotment of sites by the fourth respondent-Executive Engineer, Vijayawada, has been confirmed by the third respondent-Collector, West Godavari District, *vide* proceedings Roc.B1/12246/96, dated 21-02-1997. Thereafter, the first respondent-Municipality has issued notice under Section 228 of the A.P.Municipalities Act stating that the land on which the structures were raised belongs to the Municipality and not the Irrigation Department. Therefore, the petitioners were directed to vacate the premises and not to make any further constructions. Aggrieved by the same, the present Writ Petition is filed.

A counter affidavit has been filed by the first respondent-Municipality stating that the land belongs to them and not the Irrigation Department.

Be that as it may, the admitted facts are that the shops held by the petitioners were demolished in the process of widening the roads in the course of

implementation of master plan in Eluru town. Thereafter, the fourth respondent-Executive Engineer recommended for allotting alternative sites to the petitioners in the land belonging to Irrigation Department. In fact, lease was granted, and during the subsistence of the lease, the petitioners were permitted to raise temporary structures and conduct their own business. While so, the impugned notice was issued by the first respondent-Municipality and now a counter is filed stating that the said land belongs to them. The question as to whether the land belongs to the first respondent-Municipality or to the Irrigation Department cannot be decided in these proceedings. Since the petitioners were put in possession of the land by the fourth respondent-Executive Engineer which was approved by the third respondent-Collector and the structures raised are only temporary in nature and they are conducting the business as per the lease, the possession of the petitioners cannot be disturbed at this stage. In this view of the matter, the impugned notice is given without verifying the facts and the same is liable to be set aside.

In view of the same, the impugned notice is set aside. The respondents are permitted to conduct a detailed enquiry into the matter after issuing proper notice to the petitioners and after proper verification from the concerned governmental departments as to the ownership of the land and then proceed with the matter

as per law. Till such time, the respondents shall not interfere with the possession of the petitioners.

Accordingly, the Writ Petition is disposed of. No costs.

07-07-2006

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